ACIL

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
1998 Biennial Regulatory Review --	)	
Amendment of Parts 2, 25, and 68 of the	)	
Commission's Rules to Further Streamline	)	
the Equipment Authorization Process for	)	GEN Docket No. 98-68
Radio Frequency Equipment, Modify the	)	
Equipment Authorization Process for	)	
Telephone Terminal Equipment, Implement	)	
Mutual Recognition Agreements and Begin	)	
Implementation of the Global Mobile Personal	)	
Communications by Satellite (GMPCS)	)	
Arrangements	)	

COMMENTS OF ACIL

ACIL hereby submits these Comments in response to the FCC's Notice of Proposed Rulemaking ("NPRM") in the matter of GEN Docket No. 98-68, FCC 98-62. ACIL is a national trade association representing over 300 independent, commercial engineering and scientific laboratory, testing, consulting, product certifying, and R&D firms; manufacturers' laboratories; and consultants and suppliers.

ACIL comments follow the outline of the NPRM referencing the relevant paragraphs and numbers and responding to areas where the FCC seeks input. In addition, ACIL suggests amendments to Appendix A which are also discussed in our Comments where appropriate.

Paragraph 11.

ACIL applauds the FCC's efforts to streamline equipment authorization and approval which would

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result in faster market access for short-lived technologies and better service to manufacturers and end users of such technologies. We encourage the FCC to continue to ensure the public welfare and protection with regard to telecommunications equipment and services. ACIL believes that without the Commission's willingness to fulfill it's responsibility in enforcement and oversight while allowing deregulation and privatization of equipment authorization, the integrity of any adopted system would be compromised.

Paragraph 12.

ACIL supports the use of ISO/IEC Guide 65 as the primary qualification criteria for Telecommunications Certification Bodies ("TCBs") However, the Guide must be applied in its entirety so that such qualification can be accepted, both domestically and internationally. A partial application of the Guide could only lead to the preclusion of the universal acceptance of such qualification.

Paragraph 13.

ACIL believes that it is extremely important that a TCB have the technical expertise that will support its capability to judge the compliance of the product with the applicable regulations. ACIL agrees with the proposed new section 2.962(b)(3) requiring ISO/IEC Guide 25 compliance.

Paragraph 14.

ACIL believes that in addition to the use of NVCASE for accreditation of certification bodies, that existing private sector organizations should not be precluded from playing a role in the accreditation of certification bodies. We believe that NIST should, in accordance with it's procedures, allow other appropriately qualified accrediting bodies to accredit TCBs as certification bodies and testing laboratories.

Paragraph 15.

ACIL believes that additional language should be added to the FCC rules to address dispute resolution. Suggested wording is provided in appendix A.

ACIL believes that post market sampling and surveillance will be an effective means of monitoring the performance of TCBs.

ACIL recommends that the Commission provide a clear definition of "independence". Furthermore, we request that the Commission uphold the principle of "independence" of a TCB as outlined in Guide 65. A workable definition of "independence" as applied to TCBs may be adopted from the language of the European Directives regarding the Notified Body, a counterpart to the proposed Telecommunications Certification Body:

A Notified Body, its director and the staff responsible for carrying out the tasks for which the notified body has been designated shall not be a designer, manufacturer, supplier or installer of terminal equipment, or a network operator or a service provider, nor the authorized representative

of any of such parties. They shall not become directly involved in the design, construction, marketing or maintenance of terminal equipment, nor represent the parties engaged in these activities.[1]

Paragraph 16.

ACIL supports the use of a negotiated MRA framework as a means of addressing designation of foreign laboratories, provided there is clear balance in the requirements imposed by both parties. ACIL requests the Commission to clarify that accreditation of TCBs in the U.S. will be performed by U.S. accreditation bodies, both for the purposes of product certification and testing to the Commission's rules in the U.S., and to the European rules in the European Community. A U.S. TCB should not have to undergo accreditation by a European body in order to test and certify products to be imported in Europe according to European standards.

Paragraph 17.

Subparagraph (b). TCB grants of certification must be exactly equivalent to FCC grants under this proposal. Traditionally manufacturers have relied on a FCC grant to facilitate export of their products to foreign markets. Foreign customs officials and other Regulators recognize and accept such FCC grants as a matter of course. The TCB grant should state that the TCB is FCC designated; and the FCC should publish a letter on FCC letterhead listing current TCBs for use by the exporter.

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[1] Official Journal of the European Communities L 74, 12.3.98, p. 20

Subparagraph (f). In an effort to minimize the possibility of multiple assessment fees which may be placed on organizations submitting test data to TCBs. we recommend ISO Guide 25 accreditation as the basis for the acceptance of such test data.

Subparagraph (h). ACIL encourages the FCC not only to develop electronic options for equipment registration under Part 68 (which are non-existent at the current time), but to ensure that information requested for Part 68 is standardized and in line with that which is requested for Part 15. FCC's resources must be committed to the maintenance of a common database in order to warrant uniformity of information submitted by various certification bodies, both domestic and international. The information requested must include only the minimum necessary for the Commission to adjudicate complaints that may arise.

ACIL suggests that the minimum required information to be submitted to the Commission's common data base includes the following:

a. A copy of the application form containing all legal information pertaining to that application. This would allow the Commission to expeditiously contact the legal representative of the applicant should complaints arise.

b. A copy of the photographs pertaining to the equipment that was tested and submitted for certification to the associated TCB. The photographs will ensure proper identification of the product should complaints arise.

c. A copy of the test results collected on the product that was submitted for certification to the associated TCB. The test data will assist the Commission in determining any difference in results should complaints arise.

d. All other items required to be submitted to the associated TCB for certification, such as the Exhibits or the manual, do not need to be submitted to the Commission, as this information is not as critical to a preliminary investigation by the FCC, should complaints arise.

Furthermore, limiting the amount of information submitted to the FCC common data base to the above items would save storage space without compromising the integrity of information kept on file. ACIL is committed to work with the Commission, other industry trade associations and any other interested party to develop the format for this information template.

Paragraph 18.

Although ACIL recognizes that the FCC will retain control over the formulation of minimum technical requirements based on existing industry standards, and over the enforcement related to certification, we urge the Commission to grant the fullest authority possible to private sector certification bodies within the bounds of existing regulations.

Additionally, in paragraph 18 of the NPRM, ACIL disagrees with the Commission on the proposed limitation that "TCBs will not be empowered to authorize transfers of control of grants of

certification". Currently under FCC Part 68, an applicant may submit a simple re-registration application that effectively allows a second party to have a grant based on a first party previous grant's data submitted to the FCC. The second party (the applicant of the re-registration filing) needs only to present a letter of authorization from the first party, along with some supporting exhibits (Exhibit H (labeling), Exhibit G2 (Continuing Compliance) and Exhibit J (User's Manual)). The FCC then grants a new FCC registration number to this second party, effectively authorizing a transfer of control of the grant of certification. This function, currently provided by the FCC under a minimum set of procedures, should be allowed to be performed by the TCB, since the re-registration application is not only one of the many processes by which registration is granted in FCC Part 68, but by far the simplest one.

In general, when proposing to limit the power of a TCB, ACIL would caution the Commission to review the proposed authority of the TCBs in light of the responsibilities placed on them. If TCBs are only allowed to perform a small number of limited administrative duties without real responsibility or authority, we could run into the undesirable situation of having a dearth of TCBs.

Paragraph 19.

ACIL encourages the FCC to develop a joint public-private sector working group to arrive at consensus opinions. A group that is interested in participating in such a working group is the United States Council of EMC Laboratories (USCEL).

The transition period should be a maximum of 24 months.

Paragraph 20.

ACIL believes that the FCC maintain the capability to evaluate telecommunications equipment for the present time. However, ACIL requests that the FCC proactively foster competition in order to encourage the development of the most efficient and cost-effective private sector certification system such that, by the end of the transition period, the certification system will be ultimately transferred to the private sector.

We agree with the perceived impression that a FCC issued certificate may seem to be more "authoritative." We believe that this situation clearly mandates the need for the certificate issued by a TCB to be totally equivalent to that of the Commission We further believe, that this speaks clearly to the Commission exiting the certification process at the end of the transition period.

Paragraph 22.

ACIL disagrees with the FCC decision to distinguish between "certification" and "registration". The two terms refer to the same process. We suggest that the FCC expand the definition of the term "certification" in Part 2 to include "registration" under Part 68, in order to be consistent not only across various Parts of the Code of Federal Regulations, but also with international terminology.

With regard to "whether and to what extent Commission supervision" of certification bodies is necessary, ACIL believes that the FCC must step up their very important role of enforcing compliance

to FCC rules. ACIL encourages the FCC to increase beyond what has been the traditional role of the Commission, which is to ensure the public welfare and protection with regard to telecommunications equipment and services. ACIL believes that without the Commission's willingness to fulfill the responsibility of enforcement and oversight while allowing deregulation and privatization of equipment authorization, the integrity of any adopted system would be compromised.

ACIL strongly supports Commissioner Susan Ness in her call for reallocation of resources within the FCC to actively focus on enforcement, in the Commissioner's separate statement accompanying the FCC Report and Order relating to ET Docket 97-94.

I strongly support reducing unnecessary paperwork and delays. But we must not diminish our commitment to prevent harmful interference... Whatever our equipment authorization procedures, there will remain a danger that some products will not be designed to minimize the danger of interference. And there will also remain a problem of individuals who construct or operate transmitting devices with disregard for our rules.

Our responsibility to prevent harmful interference can only be fulfilled if we are prepared to follow through with credible enforcement. I sincerely hope that agency resources that are freed up ... will be redirected to enforcement activities, so that instances of harmful interference can be swiftly removed.[2]

Docket ET 95-19 has had the undesirable effect of some unscrupulous manufacturers and test labs

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[2] FCC Report and Order, ET Docket 97-94, FCC 98-58. Separate Statement of Commissioner Susan Ness, released April 16, 1998.

taking advantage of the Declaration of Conformity process to bypass the testing and labeling compliance requirements of the Commission's rules. As evidenced by articles published in trade magazines such as *PC Magazine*[3] and in *Compliance Engineering*[4], abuses do exist and will proliferate when there is an absence of enforcement and a general lack of perception of enforcement at large.

Additionally, ACIL opposes any further relaxation or moving of additional types of equipment from the certification process to the Declaration of Conformity or Verification processes without addressing current abuses.

Paragraphs 21-24.

Specifically regarding Part 68, the telecommunications industry has worked for over 4 years to arrive at the Harmonized version of Part 68 which came into effect April 20, 1998.[5] Among the requirements that have been changed due to the harmonization activities is the new Type B surge requirement with the new "interface integrity" criteria.[6] As reported by various test labs, the

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[3] PC Magazine, Inside PC Labs, January 6, 1998.

[4] Compliance Engineering, Conformity: Are PC Vendors Abusing FCC DoC Freedoms?, Vol. 3 No. 2, February 1998

[5] FCC Report and Order, CC Docket 96-28, FCC 97-270, released August 22, 1997.

[6] The new Type B surges were adopted due to the presence of a significant body of data which indicates that the energy of the present Part 68 Surge is very severe, relative to actual surges that occur. According to manufacturers' data of field returns, some products which remain non-operational after the FCC surge (due to the opening of a fusible component), have had problems with component opening failures in the field, resulting in product returns. Because of these considerations, the surge defined in ITU-T Recommendation K.21, which exhibits lower energy levels as compared to the FCC surge, was suggested as a more typical surge waveform and was adopted as the Type B surge. However, due to the lower energy of the Type B surge, a new fail safe criteria was adopted; the equipment must be capable of withstanding the energy of the Type B surges without causing permanent opening or shorting of the interface circuit and without sustaining other damage that will affect compliance. These criteria for allowable failure modes ensure that a protection strategy of failing open for high energy surges does not mask other potentially harmful modes at lower energies. (*Ref. TIA Petition for Rulemaking, CC*

preliminary experience so far with this surge has shown that a large number of equipment is failing the new surge criteria (with fusible component opening up in the interface). Due to this reason and to the lack of experience of the industry with the new Harmonized Part 68, ACIL strongly recommends that the FCC leaves Part 68 registration intact, i.e., requiring type approval to be administered by the certification bodies, as is currently the case. It would be a disservice to the industry and to Part 68 to propose any relaxation at this time.

Paragraph 24.

ACIL strongly supports the use of a common format among certification bodies for the transmission of information required to be archived with the Commission regarding the common database. It is imperative that the test report and test data be in a uniform format to standardize the process and to assist the regulators, manufacturers, test labs and users in searching for the proper information. Any process adopted must not be more public or more complex than the current process.

In order to foster common understanding and the development of a uniform format, certification bodies should be required to participate in industry activities such as those of the TIA's TR41.9 Terminal Attachment Programs Subcommittee[7] whose scope is to provide a consensus forum for the

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Docket 96-28, Appendix A, p. 10)

7 TR41.9 is a subcommittee of TIA Engineering Committee TR41 *User Premises Telecommunications Requirements.* TR41.9's charter includes "responding to the FCC technical concerns on subject matters relating to C.F.R. Part 68 and terminal attachment and advising the FCC on technical requirements in the regulatory environment. The Subcommittee initiates proposals and monitors new requirements and additions to Part 68 and the Canadian Standard CS-03 to ensure continued harmonization. Harmonization is achieved by coordinating activities with members of the Technical Task Force of the Canadian Terminal Attachment Program Advisory committee (TAPAC). The Subcommittee produces and maintains appropriate documentation relating to test procedures and compliance evaluations associated with the harmonized Part 68 requirements. This includes addenda and revisions to the test procedures, as required, whenever the FCC adopts changes to the Part 68 rules." *(Ref. TIA TR41.9 Scope Statement)*

understanding and technical interpretation of Part 68 requirements.

Paragraph 31.

ACIL requests that, pursuant to Section 7(3.1) of the U.S.-EU MRA, the U.S. government ensure an active role for U.S. private sector organizations. The JSC membership should include manufacturers, testing laboratories and TCBs.

Paragraph 48.

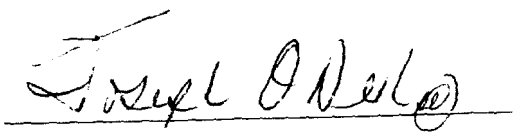
We believe that the FCC, in implementing this streamlining process, should take into account the effects of rules not only on small manufacturers, but also on small companies in the testing and certification sector.

CONCLUSION

ACIL strongly supports the Commission's efforts in this NPRM and in the process of privatizing and streamlining the equipment authorization process with the goal of eliminating delays in market access for the telecommunications and information technology industry. However, ACIL believes that it is crucial for the Commission to redirect resources to enforcement in order to preserve the integrity and the long-term viability of the proposed system.

Respectfully submitted,

ACIL

By: 

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APPENDIX A (As Amended by ACIL 7-16-98)

PROPOSED RULE CHANGES

Title 47 of the Code of Federal Regulations Parts 2, is proposed to be amended as follows:

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303. 303(r), and 307, unless otherwise noted.

2. A new Section 2.960 is added to read as follows:

Section 2.960 *Designation of Telecommunication Certification Bodies (TCBs)*

Parties other than the Commission may be designated to ~~approve~~ certify equipment. These parties will be referred to as "Telecommunication Certification Bodies" or TCBs. Certification of equipment by a TCB must be based on an application with the all the information specified in this part. The TCB must process the application to determine whether the product meets the FCC requirements and must issue a written grant of equipment authorization.

(a) The Federal Communications Commission is the Designating Authority for designating TCBs in the United States to ~~approve~~ certify equipment subject to ~~certification~~ equipment authorization. The FCC will require TCBs to be accredited by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program to show compliance with the Commission's qualification criteria for TCBs. NIST ~~may~~ shall, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs and testing laboratories following the completion of the transition period contemplated. TCBs must comply with the requirements in § 2.962 of this Part.

(b) In accordance with the terms of a Mutual Recognition Agreement or Arrangement (MRA), bodies outside the United States will be permitted to ~~authorize~~ certify equipment in lieu of the FCC. The authority designating these telecommunication certification bodies must meet the following criteria.

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC Guide 61.

(2) The organization assessing the telecommunication certification body shall appoint a team of qualified experts to perform the assessment covering all of the elements within the scope of accreditation. For assessment of telecommunications equipment, the areas of expertise to be used during the assessment shall include, but not be limited to electromagnetic compatibility and telecommunications equipment (wired and wireless)

3. A new Section 2.962 is added to read as follows:

Section 2.962 *Requirements for Telecommunication Certification Bodies*

Telecommunication certification bodies designated by the FCC, or designated by another authority pursuant to an MRA, must comply with the following criteria.

(a) Certification Methodology

(1) The certification system shall be based on type testing as identified in sub-clause 1.2(a) of ISO/IEC Guide 65.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as in cases where certain tests are likely to render a sample inoperative. All test samples shall be returned to the manufacturer unless otherwise indicated by the manufacturer.

(b) Criteria for Designation

(1) To be designated as a telecommunication certification body under this section, the body must, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it is to certify. The scope of accreditation shall specify the group of equipment to be certified and the applicable regulations.

(2) The telecommunication certification body must demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The telecommunication certification body shall have the technical expertise and capability to test the equipment it will certify and must also be accredited in accordance with ISO/IEC Guide 25 to demonstrate it is competent to perform such tests.

(4) The prospective telecommunication certification body must demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel must demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65 shall be taken into consideration.

(5) A telecommunication certification body shall participate in any consultative activities, announced by the Commission or NIST, to establish to facilitate a common understanding and interpretation of applicable regulations.

(6) A Telecommunications Certification Body, its director and the staff responsible for carrying out the tasks for which the notified body has been designated shall not be a designer, manufacturer, supplier or installer of terminal equipment, or a network operator or a service provider, nor the authorized representative of any of such parties. They shall not become directly involved in the design, construction, marketing or maintenance of terminal equipment, nor represent the parties engaged in these activities.

(c) Sub-contracting

(1) In accordance with the provisions of sub-clause 4.4 of ISO/IEC Guide 65, the testing of a product, or a portion thereof, may be performed by a sub-contractor of a designated telecommunication certification body, including a supplier's laboratory, provided the laboratory has been assessed by the telecommunication certification body in accordance with ISO/IEC Guide 25, or has been accredited to ISO/IEC Guide 25

(2) When a subcontractor is used, the telecommunication certification body remains responsible for the tests and must maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight must include periodic audits of products that have been tested.

(d) Procedures for Designation

(1) NIST will give 30 days for notice and comment in the Federal Register before accrediting a prospective TCB. ~~In the case of a foreign TCB, the foreign Designating Authority will provide 30 days for the prospective TCB to be designated in accordance with the MRA.~~

(2) In case of concern raised during the 30 day comment period, the Commission and NIST will allow sufficient opportunity for the Designating Authority and prospective TCB to provide comments before a decision will be made on the designation of the TCB.

(3) A list of designated TCBs will be published by the Commission on Commission letterhead and available electronically.

(f) Post-certification requirements

(1) A TCB shall supply an electronic copy of each approved certification application to the Commission. The certification document issued by the TCB shall be in the same format as the applicable FCC form

(2) A TCB shall attach the list of designated TCBs, pursuant to 2.962(d)(3), to the certificate issued to the manufacturer.

(3) A TCB grant shall state that it is FCC-designated.

~~(2)~~ (4) In accordance with ISO/IEC Guide 65, the TCB is required to conduct appropriate surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The importing party may at any time request a list of products certified by the certification body and may request and receive copies of product evaluation reports.

~~(3)~~(5) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the ~~supplier and the appropriate importing party~~ applicant. A follow-up report shall also be provided within thirty days of the action taken by the supplier to correct the situation.

~~(4)~~(6) Where concerns arise, the ~~TCB~~ applicant shall provide a copy of the product evaluation report within 30 calendar days upon request by the Commission. ~~to the TCB and the manufacturer~~. If the certification report is not provided within 30 calendar days, a statement shall be provided to the Commission as to why such a report cannot be provided. This could be grounds for revocation of the product certification.

(g) In case of dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. Manufacturers and designated TCBs will be afforded the opportunity to comment before a decision is reached consistent with the following due process considerations.

(1) The Commision will exercise such authority under exceptional circumstances only and justified, in an objective and reasoned manner, in writing to the TCB or manufacturer;

(2) The TCB or manufacturer will be provided a period of at least 30 days to provide information to the Commission with respect to the disputed designation or recognition or the testing for certification of products. During this period, the TCB designation or recognition will remain in effect and/or the certified products will remain on the market;

(3) In the event the information is insufficient to settle the dispute, the Commission will allow either the TCB or manufacturer a 90-day opportunity to cure the basis of the dispute with respect to the TCB designation or recognition or the product certification. During this period, the TCB designation or recognition will remain in effect and/or the certified products will remain on the market;

(4) If at the end of this 90-day period, the TCB or manufacturer fails to cure the dispute or the FCC is unpersuaded by the information presented, the Commission will advise the TCB that it intends to withdrawl its designation for the product(s) in dispute and withdrawl the certification for the product(s) in dispute.

(5) 90 days following its withdrawl of designation or a products removal from the market, the TCB may reapply for designation and the manufacturer may reapply for certification of the disputed product(s).

In the case of a TCB designated or recognized, or a product certified pursuant to a bilateral or multilateral mutual recognition agreement or arrangement (MRA), the FCC may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB consistent with MRA obligations. The FCC shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any problems arising under an MRA for the USTR's investigation or review under the Telecommunications Trade Act of 1998 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988).

Title 47 of the Code of Federal Regulations Part 25, is proposed to be amended as follows:

4. The authority citation for Part 25 continues to read as follows:

Authority: Sections 25.101 to 25.601 issued under Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sections 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

5. A new Section 25.200 is added to read as follows:

Section 25.200 *Equipment authorization.*

(a) Mobile earth satellite terminals for use in the band of 1610 - 1626.5 MHz must be authorized by the Commission under its certification procedure for use under this part. The certification procedure is found in Subpart J of Part 2 of the Rules

(b) In order to be granted certification, a transmitter must comply with the technical specifications in this part. Further, emissions in the band 1559-1605 MHz must be limited to -70 dBW / MHz averaged over any 20 millisecond period for wideband signals, and -80 dBW / 700 Hz for narrowband signals.

(c) Applicants for certification of transmitters that operate in these services must determine that the equipment complies with IEEE C95.1-1991, "IEEE Standards for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" as

measured using methods specified in IEEE C95.3-1991, "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields--RF and Microwave." The applicant for certification is required to submit a statement affirming that the equipment complies with these standards as measured by an approved method and to maintain a record showing the basis for the statement of compliance with IEEE C.95.1-1991

Title 47 of the Code of Federal Regulations Part 68 is proposed to be amended as follows:

6. The authority citation for Part 68 continues to read as follows:

AUTHORITY: Sections 1, 4, 5, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 155, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522.

7. A new Section 68.230 is added to read as follows:

Section 68.230 *Certification Bodies Designated by the Commission*

Section 68.230 *Designation of Telecommunication Certification Bodies (TCBs)*

Parties other than the Commission may be designated to ~~approve~~ certify equipment. These parties will be referred to as "Telecommunication Certification Bodies" or TCBs. TCBs will require applications with the all the information specified in this part, process applications in the same manner as the Commission, and issue written grants of equipment authorization.

(a) The Federal Communications Commission is the Designating Authority for designating TCBs in the United States to ~~approve~~ certify equipment subject to ~~certification~~ equipment authorization. The FCC will require TCBs to be accredited by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program. NIST ~~may~~ shall, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs and testing laboratories following the completion of the transition period contemplated. TCBs must comply with the requirements in § 2.962 of this Part.

(b) In accordance with the terms of a Mutual Recognition Agreement or Arrangement (MRA), bodies outside the United States will be permitted to ~~authorize~~ certify equipment in lieu of the FCC. The authority designating these telecommunication certification bodies must meet the following criteria.

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC Guide 61.

(2) The organization assessing the telecommunication certification body shall appoint a team of qualified experts to perform the assessment covering all of the elements within the scope of accreditation. For assessment of telecommunications equipment, the areas of expertise to be used during the assessment shall include, but not be limited to electromagnetic compatibility and telecommunications equipment (wired and wireless).

8. A new Section 68.232 is added to read as follows:

Section 68.232 *Requirements for Telecommunication Certification Bodies*

Telecommunication certification bodies designated by the FCC, or designated by another authority pursuant to an MRA, must comply with the following criteria.

(a) Certification Methodology

(1) The certification system shall be based on type testing as identified in sub-clause 1.2(a) of ISO/IEC Guide 65.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as in cases where certain tests are likely to render a sample inoperative. All test samples shall be returned to the manufacturer unless otherwise indicated by the manufacturer.

(b) Criteria for Designation

(1) To be designated as a telecommunication certification body under this section, the body must, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it is to certify. The scope of accreditation shall specify the group of equipment to be certified and the applicable regulations.

(2) The telecommunication certification body must demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The telecommunication certification body shall have the technical expertise and capability to test the equipment it will certify and must also be accredited in accordance with ISO/IEC Guide 25 to demonstrate it is competent to perform such tests.

(4) The prospective telecommunication certification body must demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary.

The appropriate key certification and laboratory personnel must demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65 shall be taken into consideration.

(5) A telecommunication certification body shall participate in any consultative activities, announced by the Commission or NIST, to establish to facilitate a common understanding and interpretation of applicable regulations.

(6) A Telecommunications Certification Body, its director and the staff responsible for carrying out the tasks for which the notified body has been designated shall not be a designer, manufacturer, supplier or installer of terminal equipment, or a network operator or a service provider, nor the authorized representative of any of such parties. They shall not become directly involved in the design, construction, marketing or maintenance of terminal equipment, nor represent the parties engaged in these activities.

(c) Sub-contracting

(1) In accordance with the provisions of sub-clause 4.4 of ISO/IEC Guide 65, the testing of a product, or a portion thereof, may be performed by a sub-contractor of a designated telecommunication certification body, including a supplier's laboratory, provided the laboratory has been assessed by the telecommunication certification body in accordance with ISO/IEC Guide 25, or has been accredited to ISO/IEC Guide 25.

(2) When a subcontractor is used, the telecommunication certification body remains responsible for the tests and must maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight must include periodic audits of products that have been tested.

(d) Procedures for Designation

(1) NIST will give 30 days for notice and comment in the Federal Register before accrediting a prospective TCB. ~~In the case of a foreign TCB, the foreign Designating Authority will provide 30 days for the prospective TCB to be designated in accordance with the MRA.~~

(2) In case of concern raised during the 30 day comment period, the Commission and NIST will allow sufficient opportunity for the Designating Authority and prospective TCB to provide comments before a decision will be made on the designation of the TCB.

(3) A list of designated TCBs will be published by the Commission on Commission letterhead and available electronically.

(f) Post-certification requirements

(1) A TCB shall supply an electronic copy of each approved certification application to the Commission. The certification document issued by the TCB shall be in the same format as the applicable FCC form.

(2) A TCB shall attach the list of designated TCBs, pursuant to 2.962(d)(3) to the certificate issued to the manufacturer.

(3) A TCB grant shall state that it is FCC-designated.

~~(2)~~(4) In accordance with ISO/IEC Guide 65, the TCB is required to conduct appropriate surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The importing party may at any time request a list of products certified by the certification body and may request and receive copies of product evaluation reports.

~~(3)~~(5) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the ~~supplier and the appropriate importing party~~ applicant. A follow-up report shall also be provided within thirty days of the action taken by the supplier to correct the situation.

~~(4)~~(6) Where concerns arise, the ~~TCB~~ applicant shall provide a copy of the product evaluation report within 30 calendar days upon request by the Commission. ~~to the TCB and the manufacturer~~ If the certification report is not provided within 30 calendar days, a statement shall be provided to the Commission as to why such a report cannot be provided. This could be grounds for revocation of the product certification.

(g) In case of dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. Manufacturers and designated TCBs will be afforded the opportunity to comment before a decision is reached consistent with the following due process considerations:

(1) The Commision will exercise such authority under exceptional circumstances only and justified, in an objective and reasoned manner, in writing to the TCB or manufacturer;

(2) The TCB or manufacturer will be provided a period of at least 30 days to provide information to the Commission with respect to the disputed designation or recognition or the testing for certification of products. During this period, the TCB designation or recognition will remain in effect and/or the certified products will remain on the market;

(3) In the event the information is insufficient to settle the dispute, the Commission will allow either the TCB or manufacturer a 90-day opportunity to cure the basis of the dispute with respect to the TCB designation or recognition or the product certification. During this period, the TCB designation or recognition will remain in effect and/or the certified products will remain on the market;

(4) If at the end of this 90-day period, the TCB or manufacturer fails to cure the dispute or the FCC is unpersuaded by the information presented, the Commission will advise the TCB that it intends to withdrawl its designation for the product(s) in dispute and withdrawl the certification for the product(s) in dispute.

(5) 90 days following its withdrawl of designation or a products removal from the market, the TCB may reapply for designation and the manufacturer may reapply for certification of the disputed product(s).

In the case of a TCB designated or recognized, or a product certified pursuant to a bilateral or multilateral mutual recognition agreement or arrangement (MRA), the FCC may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB consistent with MRA obligations. The FCC shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any problems arising under an MRA for the USTR's investigation or review under the Telecommunications Trade Act of 1998 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988).